UBA WisdomStream

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Striking a Balance:

How Employers Can Make the Best Decisions on Grandfathering Their Health Plans

A UBA Member-Provided Publication Designed To Help Employers Make Informed Benefit Choices

WisdomStream

The interim regulations on grandfathered plans under the Patient Protection and Affordable Care Act (PPACA) are designed to allow employers to keep their current plans intact and at the same time ensure that employees are protected from significant loss of benefits or increased costs. Federal guidance, effective Sept. 23, 2010, attempts to lay down the rules for employers who want to retain grandfathered status. Essentially, the guidance states that for a plan to qualify for grandfathered status, it:

- Can only make very limited changes to coverage
- Is heavily restricted in terms of increasing cost sharing
- Cannot change carriers if it is a fully-insured plan

These restrictions pose a serious challenge to employers who wish to keep their plans under the grandfathering clause. With calendar-year plan renewal season in full swing, many employers are anxious to make decisions. However, various factors – especially a company's location – make a one-size-fits-all solution for employers unrealistic and impracticable, experts say.

Is Grandfathering Good? It Depends On Your State

The Obama administration estimates that the majority of the 170 million Americans who have employer-sponsored health insurance through companies with 100 or more workers (133 million Americans) won't see any changes as a result of the regulations. The rules, however, likely will impact small businesses significantly. Experts predict that while 70 percent of plans sponsored by small businesses will be grandfathered the first year, only one-third will remain so over several years. About half of all employer-sponsored health plans will see such changes by the end of 2013, according to the administration in an economic analysis of the rules.[1]

"New Jersey may be a 'poster child' for determining the longevity of grandfathered status for an organization," said Scott Rappoport, president of Benefit Sources & Solutions of Bound Brook, N.J., and a Member of United Benefit Advisors (UBA), a member-owned alliance of the nation's premier independent benefit advisory firms.

"In 1993, New Jersey made a landmark decision in passing health care reform where employers could choose from five standard plans and remain grandfathered. The monthly premiums eventually skyrocketed, and participation and the number of carriers declined. Most [grandfathered] plans only lasted about one to two years as an affordable option."

The regulatory environment on reform varies substantially by state and can greatly affect an employer's decision to retain grandfathered status. According to a report issued by Blue Cross Blue Shield, 25 states (with 67 percent of the U.S. population) had few or no regulations on health care insurance prior to health care reform. Nine states have a modest number of regulations, and 13 states match the current regulation level. Only two states, New York and Vermont, are beyond reform with their current regulations and require no changes to comply.[2]

"Many of our clients are trying to figure grandfathering out, but most don't think it is a big deal," said Beth Oldfield, assistant vice president of Compliance with Insurance Solutions of Annapolis, Md., and a UBA Member. "We have very few

Advantages of Grandfathered Status

Grandfathered plans will not have to comply with the following provisions of the Patient Protection and Affordable Care Act (PPACA). Due to these exemptions, many plan sponsors will want to retain their plan's grandfathered status for as long as that proves to be feasible.

- Prohibition against discrimination as to coverage, eligibility or contributions
- The requirement to offer certain preventive services (immunizations and screenings) without cost sharing
- Coverage of adult children eligible for other employer-sponsored coverage (through 2014)
- Required coverage of routine expenses for participation in clinical trials
- Choice of participating specialists as PCPs or requiring referrals for OB/GYN services
- No prior approval for or higher out-of-network cost sharing for emergencies
- Annual reports on health care quality and care coordination
- Enhanced internal and external claim review and claim appeals procedures

"Depending upon the situation, many employers in our market will not have a financial option to maintain grandfather status."

plans with lifetime limits, and we already have regulations in place covering dependents up to age 25, pre-existing conditions and open access to OBGYN. And only a few of our clients are concerned about noncompliance with the discrimination provisions."

What Works For Me May Not Work For You

Generally, employers are focused on whether or not they should retain their health plan grandfathering status to preserve the quality of their benefits and to keep costs reasonable, experts say. Many employers say the draft rules are too inflexible: Plans can lose their protected status by increasing copayments and deductibles above certain limits, and medical inflation alone can push their costs over the line. "Fifteen percent plus medical inflation is nowhere near the amount of flexibility small businesses need when rates can potentially shoot up higher than this for businesses every year," according to Rappoport.

Projections of Employer Plans Remaining Grandfathered, 2011-2013 [3]

There is considerable uncertainty about what choices employers will make over the next few years as the market prepares for the establishment of the competitive exchanges and other market reforms, such as new consumer protections, middle-class tax credits and other steps to expand affordability and choice for millions more Americans. This rule estimates the likely decisions of employers based on assumptions and extrapolations of recent market behavior, including the decisions by employers to change their health plans in 2008 and 2009. The table below depicts the results of this analysis.

Type of Plan	Enrollees	Employer Plans Remaining Grandfathered 2011	Employer Plans Remaining Grandfathered 2012	Explanation
Allowable Percent Change in Copayments from 2010		Medical inflation* (4%) + 15% = 19%	Medical inflation* ($4\%^3 = 12\%$) + 15% = 27%	Deductibles, copayments can increase faster than medical inflation over time
Large Employer	133 million	Low: 87% remain grandfathered Mid-range: 82% remain grandfathered High: 71% remain grandfathered	Low: 66% remain grandfathered Mid-range: 55% remain grandfathered High: 36% remain grandfathered	Large plans are more stable and often self-insured. Regulation permits plans to make routine changes needed to keep premium growth in check.
Small Employer	43 million	Low: 80% remain grandfathered Mid-range: 70% remain grandfathered High: 58% remain grandfathered	Low: 51% remain grandfathered Mid-range: 34% remain grandfathered High: 20% remain grandfathered	Small businesses typically buy commercial insurance and frequently make changes in insurers and coverage. Limited purchasing power and high overhead often force a trade-off between dramatic changes in benefits and cost sharing and affordable premiums.

* Assumes medical inflation at 4%. The "low" percentage is based on the mid-range percentages plus plans that could stay grandfathered with small premium changes. The "mid-range" percentage is based on assumptions of the number of plans that would lose their grandfathered status if they made changes consistent with the changes that they made in 2008 and 2009 that would not lead to premium increases. The "high" percentage assumes that some plans would not be able to make the adjustments to employer premium contribution they would need to keep premiums the same while keeping their other cost-sharing parameters within the grandfathering rules. The estimates in this case assume these plans will choose to relinquish their grandfathered status instead.

In states with minimal health insurance regulations prior to health care reform, most employers are concerned about the additional reporting and notification issues and what will happen to their current contribution strategy if their plans are not grandfathered. In Arizona – a state that has few regulations that match PPACA – grandfathering is simply not a viable option for many employers, according to Mark Bagnall of *the bagnall company* in Phoenix, a UBA Member Firm.

"Grandfathering in and of itself does not appear to be a huge issue as most employers are having to make plan and/or contribution changes that would not allow them to grandfather anyway," Bagnall said.

"Depending upon the situation, many employers in our market will not have a financial option to maintain grandfathered status," he said. "For example, if an employer receives a 20 percent rate increase and cannot afford it, the only items that can be utilized to reduce it are plan design changes (higher copays, deductibles, etc.) and/or higher employee contributions to mediate the renewal. Most of the time, either one or the other will mandate a nongrandfathered status. Some insurance carriers are taking the position that if any changes are made to the plan in place currently, the plan must move to a nongrandfathered status," Bagnall said.

The situation is similar in Florida and New Jersey, where decisions by the carrier can trump an employer's desire to grandfather their plans. "Several insurance carriers in the Florida market were not allowed to amend their plans, so they filed new plans, and others are sure to follow," said Carol Taylor, a benefit consultant with Beacon Benefit Consulting, a UBA Member Firm located in Jacksonville. "The sponsors aligned with these carriers therefore have no option to keep their grandfathered status."

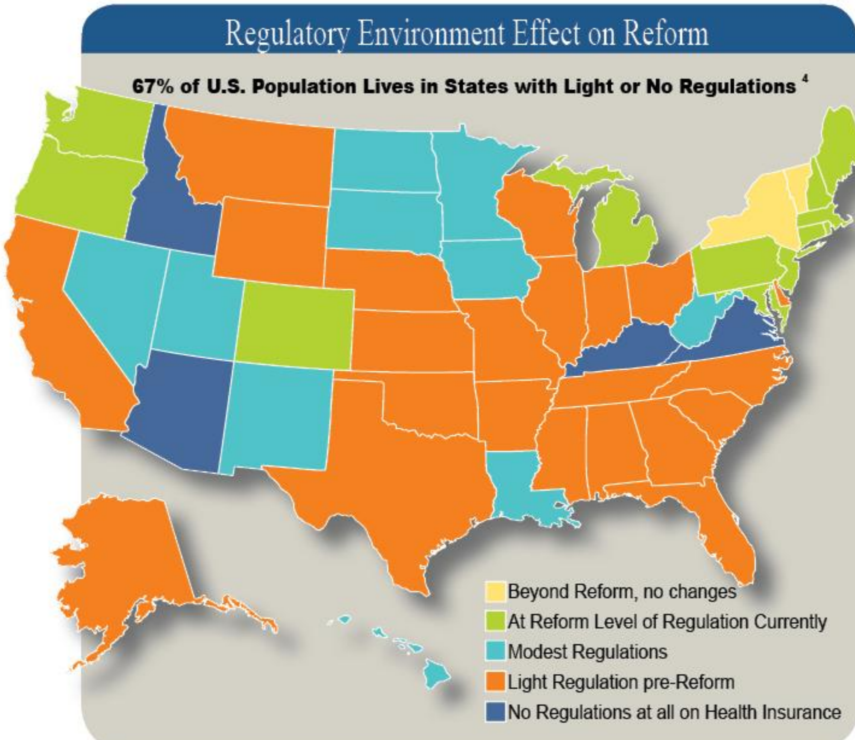
Terriann Procida, president of Innovative Benefit Planning, LLC, a UBA Member Firm located in Cinnaminson, N.J., agrees. "Many employers in our market, especially those in the 2-to-200 employee groups, are frustrated that a choice is not even being offered because of carriers making sweeping changes."

Keeping Your Current Plan

Under PPACA, health care plans that do not undergo "significant changes" won't have to comply with some of the law's provisions, such as full coverage of preventive services. The rules, according to reports by *Workforce Management* and *Human Resource Executive Online*, offer some examples of what moves would trigger a loss of grandfathered status.

They include:

- Eliminating coverage of a specific medical condition, even if the condition is uncommon
- Increasing coinsurance requirements
- Increasing copays by more than $5 or more than 15 percent plus the rate of medical inflation (whichever is greater)
- Decreasing the employer's share of premium paid by more than 5 percentage points
- Moving to another grandfathered plan with fewer benefits



However, employers who do have the option to grandfather shouldn't automatically assume that it's the best choice, Taylor cautioned. Quite simply, many of the new requirements -- including those that are excluded by grandfathering and those that are not -- likely won't have a significant impact on many employers' current plan designs, at least in the short term.

"People are overreacting to the unlimited lifetime limits and the effect on their rates," she said. "In 20 years in the industry, I've only seen four people hit the $1 million mark, and the last time this happened was 10 years ago. It takes a lot to reach $1 million. Much of the panic is hype that really should not be a major concern for most employers. We also see many employers who already include the preventative measures in their plan."

Of all the provisions, the nondiscrimination exemption appears to be one of the few significant benefits of grandfathering, Taylor said.

Costs of PPACA

The Obama administration estimates that these changes mandated by PPACA will have little effect on premiums, according to a report by *Kaiser Health News*. For instance, the government expects the provision that prohibits denial of coverage of children with pre-existing conditions to prompt an annual premium increase of 1 percent or less. The administration said the ban on lifetime limits could drive up premiums by 5.1 percent on plans that have annual limits of $250,000. However, the government asserts that only 0.5 percent of plans fall into this category, and most people would see an annual premium increase below 1 percent. Government analysts expect the end of rescissions to spark an annual premium increase of less than 1 percent, as well.

Some legislators and industry analysts, on the other hand, question the reality of those estimates and say the regulations fall short of helping employers or employees.

"While [rules] will purport to add clarity to the 2,700 pages of health care legislation, the effect will be more hoops to jump," Cyndy Nayer, president of the Center for Health Value Innovation, told *Employee Benefit News*.

"The rules that should be clarifying how this will benefit the citizens are not delivering on affordable and accessible care, and the [Obama] administration does not appear to be focused on easing the transition," Nayer said.

John Garner, CEO of Garner Consulting, a UBA Member Firm located in Pasadena, Calif., sees the nondiscrimination provision as important to some employers and not so important to others. "Take an employer that provides one set of benefits for salaried employees and one set for the hourlies under a fully-insured plan. If they lose their grandfathering status and provide the same plan to everyone, this may be an unaffordable option. But if they cut benefits overall, this can be very unpopular with employees."

Instead of grandfathering the plan, most employers can find ways to make up for loss of the nondiscrimination exemption and other provisions, experts said.

"There are really only two angles that make sense in our market for employers to keep their grandfathering status: If you are currently discriminating in favor of highly compensated individuals and if the preventative care coverage you provide is weak," said Rappoport in New Jersey. "Basically, employers can get around the executive compensation discrimination issue by complying and simply providing that everyone pay the same and then compensate employees who you want to provide a higher contribution to by increasing their pay accordingly."

How To Decide: Get Personal Advice

Employers nationwide are confused and even unaware of how their current plan is affected by health care reform, experts say. Many do not believe that the provisions will impact their health insurance plans. Others are considering how much flexibility they have to make changes to their plans and still keep their grandfathered status. Some employers are frustrated because they don't even have a choice, and others simply have not even started thinking about the topic.

"We are seeing employers that are very anxious to make decisions about grandfathering and others that feel retaining grandfathering is not important," Garner said. "Our concern is that employers may be making choices that may cost them later. Our business approach to helping clients make good health insurance choices includes conducting a cost-budget analysis. But this is difficult to do since not all the rules have been written.

PPACA Changes for All Plans

All employers, including those who choose to grandfather their plans, must comply with the following for plans that begin on or after Sept. 23, 2010:

- Elimination of lifetime limits on coverage for all plans
- Elimination of "restricted" annual limits (e.g., annual dollar limits on coverage below standards to be set in future regulations to be effective 2014)
- No coverage exclusions for children with pre-existing conditions
- Prohibition on excessive waiting periods (effective 2014)
- Prohibition of pre-existing condition exclusion or other discrimination based on health status (effective 2014)
- Development and utilization of uniform explanation of coverage documents and standardized definitions (effective 2014)
- Prohibition of rescissions of coverage except in the case of fraud or intentional misrepresentation (applies primarily to individual policies)
- Coverage for adult children not covered by other employer-sponsored plans

"For example, for a business to cover the 'essential health benefits' as referenced in PPACA, when we don't know what the rules will be, could end up costing an employer more at a later date," he said. "We are recommending to all our clients that they only make changes within the restrictions such as increased deductibles, copays and contribution to retain their grandfathered status through next year."

The bottom line is that the marketplace is flooded with information (and misinformation), and most employers don't have the experience or interest to deal with it. To complicate matters, regulations on a large number of PPACA provisions have yet to be issued by federal agencies. Seeking expert advice now could save employers a lot of headaches a few years down the road, Bagnall noted.

"Our clients are relying upon us to provide counsel and direction on compliance issues," he said. "Most of our clients are medium-size employers that are already burdened with running a business in a slow economy and cannot -- or will not be able to -- devote resources to comply. Our job is more important now than before health care reform."

Procida added: "We have found that many employers and even third-party administrators are not up to speed on grandfathering provisions and the necessary administrative requirements, such as when to file notices, and we pride ourselves for being ahead of the game. They are coming to us because they don't have the knowledge they need, and they realize we add value by helping them understand how the provisions affect their individual situations. We also use benchmarking data from the UBA Health Plan Survey and impact studies to identify trends in year-to-year plan design changes to keep employers competitive in their markets."

For employers, the real question to consider is not how PPACA will impact them, but when. While the regulations open the door for a plan to remain grandfathered indefinitely, future provisions and the rising cost of health care make that scenario unlikely, several UBA Members said.

Employers should consider the savings versus the cost potential when keeping or implementing a new plan, according to several UBA Member Firms. Conservative employers

Communicting Your Grandfathered Status to Employees

Once the decision is made to grandfather a plan, employees need to be informed. Under PPACA, employers who elect to grandfather their health plans are required to provide employees with a notice that announces that action. The Department of Labor has posted a model notice that employers may use: http://www.dol.gov/ebsa/grandfatherregmodelnotice.doc.

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Aside from the legal requirements, communicating the decision to remain grandfathered can provide an excellent opportunity to explain the company's strategy to employees and answer questions about how grandfathering affects them. One of the pros of staying grandfathered — maintaining plan costs — can be a good talking point when explaining the company's actions. Also, it's important to inform workers that although grandfathering exempts the plan from some provisions of health care reform (such as limits on cost sharing), the plan still must comply with others, such as the elimination of lifetime limits on benefits. Getting the facts in front of your employees will go a long way in reducing confusion and helping them make the most of their benefits under a grandfathered plan.

may opt to keep their plans intact until further guidance is released. Less conservative employers or those seeking immediate financial relief may opt for new plans. Certainly, employers must attract and retain talented employees, and maintaining a competitive overall employee benefit program is a proven way to strengthen that effort. Seeking expert advice is a vital step for employers to ensure they can keep offering quality benefits to their employees in this post-reform world.

"Whether an employer stays grandfathered or not, PPACA creates a greater bureaucracy and administrative burden, making it even more important for employers to rely on a professional advisor for advice and support," said Rappoport. "Given the double-digit increases we are seeing, employers are considering every possible way to manage cost and should align with a qualified advisor who will leave no stone unturned looking for creative ways to keep the quality of their plan high and their cost increases low."

1. New York Times, New Rules on Changes to Benefits, Robert Pear, New York Times, June 14, 2010
2. The Patient Protection and Affordable Care Act: Impact on the Louisiana Health Insurance Market, Michael Bertaut, Senior Healthcare Intelligence Analyst, Blue Cross Blue Shield
3. www.hhs.gov/news/press/2010pres/06/20100614e.html
4. The Patient Protection and Affordable Care Act: Impact on the Louisiana Health Insurance Market, Michael Bertaut, Senior Healthcare Intelligence Analyst, Blue Cross Blue Shield

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